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AETNA LIFE INSURANCE COMPANY AND STERLINE COMMERCE, INC.
EMPLOYEE WELFATRE BENEFIT PLAN

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES BAHR,

Plaintiff,

vs.

AETNA LIFE INSURANCE COMPANY
and STERLING COMMERCE, INC.
EMPLOYEE WELFARE BENEFIT PLAN,

Defendants.

CASE NO. CV 11-02500 RGK
(PLAx)

*[Assigned to the Honorable R.
Gary Klausner]*

**AETNA LIFE INSURANCE
COMPANY'S AND
STERLING COMMERCE,
INC. EMPLOYEE WELFARE
BENEFIT PLAN'S ANSWER
TO THE COMPLAINT**

Courtroom: 850

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

COMES NOW Defendants AETNA LIFE INSURANCE COMPANY and
STERLING COMMERCE, INC. EMPLOYEE WELFARE BENEFIT PLAN
(collectively "Defendants"), answering the Complaint of James Bahr
("Complaint"), in accordance with the numbered paragraphs herein:

1. Responding to Paragraph 1 of the Complaint, Defendants admit this
Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(a), (e),
(f), and (g). Defendants admit that that Plaintiff's claims arise under the Employee

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1 Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, *et seq.*
2 Defendants deny each and every remaining allegation contained in Paragraph 1 of
3 the Complaint.

4 2. Responding to Paragraph 2 of the Complaint, Defendants admit the
5 allegations contained therein.

6 3. Responding to Paragraph 3 of the Complaint, Defendants admit the
7 allegations contained therein.

8 4. Responding to Paragraph 4 of the Complaint, Defendants admit the
9 allegations contained therein.

10 5. Responding to Paragraph 5 of the Complaint, Defendants admit the
11 allegations contained therein.

12 6. Responding to Paragraph 6 of the Complaint, Defendants admit venue
13 is proper pursuant to 29 U.S.C. § 1132(e)(2). Defendants admit that the Long
14 Term Disability Benefits provided under the Plan ("Plan") are fully insured by
15 Aetna. Defendants admit that since on or about January 13, 1904, Aetna has been
16 registered as a corporation with the State of California and has extensive contacts
17 within the state, employs California residents, conducts ongoing business within
18 the State and therefore, may be found within the state. Defendants deny each and
19 every allegation contained in footnote 1 of the Complaint as it constitutes legal
20 argument rather than factual allegations, thereby requiring no answer. To the
21 extent said statements could be construed as containing factual allegations,
22 Defendants deny each and every allegation contained in footnote 1 of the
23 Complaint. Except as expressly admitted, Defendants deny each and every
24 remaining allegation contained in Paragraph 6 and footnote 1 of the Complaint.

25 7. Responding to Paragraph 7 of the Complaint, Defendants admit that at
26 all relevant times, Plaintiff was an employee Sterling Commerce, Inc. and an
27 eligible participant of the Plan. Except as expressly admitted, Defendants lack
28 sufficient information to admit or deny the remaining allegations contained in

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1 Paragraph 7 and therefore deny each and every allegation contained therein.

2 8. Responding to Paragraph 8 of the Complaint, Defendants admit that
3 on or about January 1, 2007, Defendant Aetna Life Insurance Company issued a
4 group insurance Policy to Sterling Commerce, Inc. Defendants admit that Plaintiff
5 was eligible to participate in the Plan. Defendants deny that the entirety of the
6 Plan is attached to the Complaint as Exhibit "A". Except as expressly admitted,
7 Defendants deny each and every remaining allegation contained in Paragraph 8 of
8 the Complaint.

9 9. Responding to Paragraph 9 of the Complaint, Defendants admit that
10 Plaintiff was eligible for monthly benefits should he become disabled as defined by
11 the terms of the Plan. Defendants admit that Aetna Life Insurance Company fully
12 insures benefits provided under the Plan and is the Claims Administrator.
13 Defendants deny each and every allegation contained in footnote 2 of the
14 Complaint as it constitutes legal argument rather than factual allegations, thereby
15 requiring no answer. To the extent said statements could be construed as
16 containing factual allegations, Defendants deny each and every allegation
17 contained in footnote 2 of the Complaint. Except as expressly admitted,
18 Defendants deny each and every remaining allegation contained in Paragraph 9 and
19 footnote 2 of the Complaint.

20 10. Responding to Paragraph 10 of the Complaint, Defendants object to
21 the form of Paragraph 10 as the information is not provided in a narrative capable
22 of a proper response. Defendants further object as the information provided under
23 the Terms/Provisions sections are taken out of context as the information is
24 incomplete and only portions of the documents are offered for the Court's review.
25 Defendants object to Paragraph 10 as the Plan documents, which are a part of the
26 administrative record, speak for themselves. In addition, except as expressly
27 admitted, Defendants deny each and every allegation contained within Paragraph
28 10 of the Complaint.

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11. Responding to Paragraph 11 of the Complaint, Defendants admit that Plaintiff worked for Sterling Commerce, Inc. since 1994. Defendants admit that when Plaintiff ceased working his position with Sterling Commerce, Inc. was staff analyst, level 4. Defendants object to the form of Paragraph 11 as the information is not provided in a narrative capable of a proper response. The information is not provided in the standard complaint format as the bullet points are not individually numbered. Defendants object to footnotes number 3 as the information provided is incomplete and only portions of the website document is quoted for the Court's review. Defendants further object to footnote 3 as it is not part of the administrative record and is therefore excluded from review under *Mongeluzo v. Baxter Travenol Long Term Disability Benefit Plan*, 46 F. 3d 938, 943-944 (9th Cir. 1995). Except as expressly admitted, Defendants deny each and every allegation contained in Paragraph 11 of the Complaint.

12. Responding to Paragraph 12 of the Complaint, Defendants admit that Plaintiff did receive short term disability benefits. Defendants deny each and every remaining allegation contained in Paragraph 12 of the Complaint.

13. Responding to Paragraph 13 of the Complaint, Defendants admit that Plaintiff did receive short term disability benefits. Defendants deny each and every allegation contained therein.

14. Responding to Paragraph 14 of the Complaint, Defendants object to the form of Paragraph 14 as the information is not provided in a narrative capable of a proper response. The information is not provided in the standard complaint format as the bullet points are not individually numbered. Defendants further object as the information provided is taken out of context as the information is incomplete and only portions of the document are offered for the Court's review. Defendants object to Paragraph 14 as the July 19, 2009 and December 29, 2009 letters, which are part of the administrative record, speak for themselves respectively. Except as expressly admitted, Defendants deny each and every

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1 remaining allegation contained within Paragraph 14 of the Complaint.

2 15. Responding to Paragraph 15 of the Complaint, Defendants deny each
3 and every allegation contained therein. Defendants object to footnote number 4 as
4 the information provided to the extent it constitutes legal argument rather than
5 factual allegations, thereby requiring no answer. To the extent said statements
6 could be construed as containing factual allegations, Defendants deny each and
7 every allegation contained in footnote 4 of the Complaint. Except as expressly
8 admitted, Defendants deny each and every remaining allegation contained in
9 Paragraph 15 of the Complaint and footnote 4.

10 16. Responding to Paragraph 16 of the Complaint, Defendants object to
11 the form of Paragraph 16 as the information is not provided in a narrative capable
12 of a proper response. The information is not provided in the standard complaint as
13 the chart format is not numbered. Defendants further object as the information
14 provided is taken out of context as the information is incomplete and only portions
15 of the document are offered for the Court's review. Defendants object to the
16 documents cited in the chart which are part of the administrative record and speak
17 for themselves. Defendants further deny the allegations contained in footnotes 5
18 through 9 as the information provided is not reliable given there is no supportive
19 authority cited and the footnotes are incomplete general descriptions of alleged
20 conditions/symptoms that are not necessarily suffered by Plaintiff. Defendants
21 deny each and every allegation contained within Paragraph 16 and footnotes 5
22 through 9 of the Complaint.

23 17. Responding to Paragraph 17 of the Complaint, Defendants admit
24 Plaintiff has not received long term disability benefits. Defendants object to the
25 form of Paragraph 17 as the information is not provided in a narrative capable of a
26 proper response. The information is not provided in the standard complaint format
27 as the bullet points are not individually numbered. Except as expressly admitted,
28 Defendants deny each and every remaining allegation contained within Paragraph

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17 of the Complaint.

18. Responding to Paragraph 18 of the Complaint, Defendants deny each and every allegation contained therein. Further, Defendants deny the allegations contained in Paragraph 18 to the extent the allegations constitute legal argument rather than factual allegations, thereby requiring no answer. To the extent said statements could be construed as containing factual allegations, Defendants deny each and every allegation contained in Paragraph 18 of the Complaint.

19. Responding to Paragraph 19 of the Complaint, Defendants deny each and every allegation contained therein. Further, Defendants deny the allegations contained in Paragraph 19 to the extent the allegations constitute legal argument rather than factual allegations, thereby requiring no answer. To the extent said statements could be construed as containing factual allegations, Defendants deny each and every allegation contained in Paragraph 19 of the Complaint.

20. Responding to Paragraph 20 of the Complaint, Defendants deny each and every allegation contained therein.

21. Responding to Paragraph 21 of the Complaint, Defendants deny each and every allegation contained therein. Further, Defendants deny the allegations contained in Paragraph 21 to the extent the allegations constitute legal argument rather than factual allegations, thereby requiring no answer. To the extent said statements could be construed as containing factual allegations, Defendants deny each and every allegation contained in Paragraph 21 of the Complaint.

22. Responding to Paragraph 22 of the Complaint, Defendants are informed and believe and based thereon admit that Plaintiff is seeking a declaration of this Court that he meets the long term disability Plan definition of disability and consequently he is entitled to benefits from the Plan. Further, Defendants are informed and believe and based thereon admit that in the alternative, Plaintiff seeks a remand to the Plan Administrator for a determination of Plaintiff's claim consistent with the terms of the Plan. Plaintiffs deny that the Plan Administrator

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1 has discretionary authority to review claims and make claim determinations under
2 the fully insured Plan at issue. Except as expressly admitted, Defendants deny
3 each and every allegation contained in Paragraph 22 of the Complaint.

4 **AFFIRMATIVE DEFENSES**

5 Defendants allege the following as further and separate affirmative defenses
6 to Plaintiff's Complaint:

7
8 **FIRST AFFIRMATIVE DEFENSE**

9 **(Failure to State a Claim for Relief)**

10 1. Defendants allege that the Complaint and each of the claims that are
11 asserted against the Defendants fail to set forth facts sufficient to constitute a claim
12 for relief against Defendants.

13
14 **SECOND AFFIRMATIVE DEFENSE**

15 **(Estoppel)**

16 2. Defendants are informed and believe, and thereon allege, that the
17 Complaint is barred by the doctrine of estoppel.

18
19 **THIRD AFFIRMATIVE DEFENSE**

20 **(Waiver)**

21 3. Defendants are informed and believe, and thereon allege, that the
22 Complaint is barred by the doctrine of waiver.

23
24 **FOURTH AFFIRMATIVE DEFENSE**

25 **(Failure to Comply with Conditions Precedent)**

26 4. Defendants are informed and believe, and thereon allege, that
27 Plaintiff's cause of action is barred, in whole or part, to the extent that Plaintiff
28 failed to comply with the conditions precedent under the long term disability Plan

1 at issue in this litigation.

2
3 **FIFTH AFFIRMATIVE DEFENSE**

4 **(Reasonable Conduct)**

5 5. Defendants allege that all acts performed by it were performed fairly,
6 in good faith, and for a lawful purpose, and the conduct of these answering
7 Defendants' was in compliance with the explicit and implied terms of the Plan at
8 issue in this litigation and its obligations under applicable law.

9
10 **SIXTH AFFIRMATIVE DEFENSE**

11 **(Acts or Omissions of Others)**

12 6. Defendants allege that if Plaintiff was injured as alleged in the
13 Complaint, he was injured by acts or omissions of persons or organizations other
14 than Defendants, whom were neither under the control of, nor in the employ of,
15 Defendants.

16
17 **SEVENTH AFFIRMATIVE DEFENSE**

18 **(Privileged Conduct)**

19 7. Defendants allege that each and every act or statement done or made
20 by these answering Defendants and their officers, employees, agents or insurers
21 with reference to the matters at issue, was a good faith assertion of the rights and
22 obligations, and therefore, was privileged or justified.

23
24 **EIGHTH AFFIRMATIVE DEFENSE**

25 **(Offset of Payment)**

26 8. If Plaintiff is entitled to payment of any benefits, any such payment
27 must be reduced and offset by any and all other income benefits, as defined in the
28 long term disability Plan, payable to Plaintiff.

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NINTH AFFIRMATIVE DEFENSE

(Own Occupation)

9. Plaintiff did not suffer from sickness or injury of a severe nature that would have prevented Plaintiff from performing the material duties of her own occupation.

TENTH AFFIRMATIVE DEFENSE

(Any Reasonable Occupation)

10. Plaintiff did not suffer from sickness or injury of a severe nature that would have prevented Plaintiff from performing the duties of any reasonable occupation for which Plaintiff was fitted by education, training or experience.

ELEVENTH AFFIRMATIVE DEFENSE

(Proper Investigation)

11. Defendants have a duty to the other Plan members to investigate Plaintiff's claim and to determine whether it was properly payable under the terms and conditions of the Plan at issue. Defendants, in discharging that duty, acted properly at all times herein relevant.

TWELFTH AFFIRMATIVE DEFENSE

(Mitigation of Damages)

12. If Plaintiff sustained any injuries or damages as a result of the conduct complained of herein, then Plaintiff proximately caused, aggravated and/or failed to take proper action to reduce and/or mitigate such injuries or damages.

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THIRTEENTH AFFIRMATIVE DEFENSE**(Contractual Defenses)**

13. To the extent the terms and/or provision of the long term disability coverage Plan provides contractual defenses not specifically set forth herein, Defendants reserve the right to assert those terms and/or provisions as defenses at anytime throughout this proceeding and incorporates by reference any potentially applicable terms or provisions into this response.

FOURTEENTH AFFIRMATIVE DEFENSE**(ERISA Preemption)**

14. To the extent the long term disability coverage Plan is subject to the Employee Retirement Income Security Act of 1974 (28 U.S.C. § 1001, *et seq.*) (“ERISA”), all of Plaintiff’s state law causes of action and claims for extra-contractual damages are thereby preempted.

FIFTEENTH AFFIRMATIVE DEFENSE**(Limited Remedy)**

15. Although Defendants deny any liability to Plaintiff, in the event benefits are awarded to Plaintiff, Plaintiff’s remedies are limited under ERISA.

SIXTEENTH AFFIRMATIVE DEFENSE**(Right to Assert Additional Defenses)**

16. Plaintiff fails to plead claims with sufficient particularity to permit Defendants to determine all applicable defenses. Defendants reserve the right to assert additional defenses as information is obtained through discovery and investigation.

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SEVENTEENTH AFFIRMATIVE DEFENSE

(Remand)

17. If Aetna's decision to terminate Plaintiff's benefits is found to have been incorrect, Plaintiff's claim must be remanded to Aetna for determination of the amount and extent of benefits to which Plaintiff may be entitled for the period of time after the date of that termination.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Offset)

18. If Plaintiff is entitled to benefits, the amount of any such benefits must be reduced and offset by any other income, as defined in the benefits plans, which Plaintiff may be receiving or entitled to receive.

WHEREFORE, Defendants pray for judgment as follows:

1. That judgment be entered in favor of Defendants;
2. That Plaintiff be awarded nothing;
3. That Defendants be awarded costs and reasonable attorney's fees from Plaintiff; and
4. For such other and further relief as this Court may deem just and proper.

Dated: May 20, 2011

GORDON & REES LLP

By: /s/ Ronald K. Alberts
Ronald K. Alberts
A. Louis Dorny
Attorneys for Defendants
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